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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 LEE DAVIS WIGHT,

11 Plaintiff,

No. CIV S 06-0228 GEB KJM PS

12 vs.

13 SOCIAL SECURITY ADMINISTRATION, et al.,

14 Defendants.

ORDER

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16 Defendants' motions for summary judgment and sanctions came on regularly for  
17 hearing July 26, 2006. Plaintiff appeared in propria persona. Yoshinori Himel appeared for  
18 defendant. Upon review of the documents in support and opposition, upon hearing the  
19 arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

20 Defendants move for summary judgment. Plaintiff has not opposed the motion  
21 but in a document filed July 10, 2006 requests that this action be dismissed with prejudice. That  
22 request shall be honored.

23 Defendants also move for sanctions under Federal Rule of Civil Procedure 11.  
24 Plaintiff does not dispute the statement of facts set forth in defendants' motion. Although it  
25 appears there were procedural irregularities in connection with plaintiff's attempts to exhaust his  
26 administrative remedies with respect to his FOIA request for copies of a notice of levy and a

1 statement of amounts withheld, the court finds the filing of the initial complaint in this action is  
2 not sanctionable under Rule 11. However, plaintiff then filed an amended complaint in which  
3 plaintiff sought a nonexistent document that was not the subject of a prior FOIA request. In light  
4 of plaintiff's receipt of the documents requested under FOIA that were the subject of the original  
5 complaint and the information provided to plaintiff by defense counsel after the amended  
6 complaint was filed, the court finds plaintiff's continued maintenance of the instant action was  
7 frivolous. Moreover, plaintiff's moving for an award of attorneys' fees after he requested  
8 dismissal with prejudice was frivolous inasmuch as plaintiff is proceeding pro se and has not  
9 demonstrated that he is the prevailing party. 5 U.S.C. § 552(a)(4)(E); Kay v. Ehrler, 499 U.S.  
10 432, 434-35 (1991) (citing Falcone v. IRS, 714 F.2d 646 (6th Cir. 1983) for proposition that pro  
11 se FOIA plaintiff not entitled to attorneys' fees); see also docket nos. 14 (plaintiff requested  
12 \$2,240.00 in legal and other costs) & 18 (plaintiff based claim for fees on valuation of his time at  
13 \$200 per hour). Plaintiff therefore will be admonished regarding his failure to conduct  
14 reasonable inquiry into the law. See Federal Rule of Civil Procedure 11(b)(2).

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. This action is dismissed with prejudice.

17 2. Plaintiff is admonished under Federal Rule of Civil Procedure 11 for  
18 maintaining a frivolous action on the amended complaint and for filing a frivolous motion for  
19 attorneys' fees.

20 DATED: September 28, 2006.

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23 UNITED STATES MAGISTRATE JUDGE  
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